

SCHEDULE 2

Regulation 4(2)

Provisions of Schedule 6 to the Change of Category Regulations, applied by regulation 4(1), as modified by Schedule 1 TRANSFER OF LAND

PART I

Effects of transfers under this Schedule

1. Where any land is transferred to and vests in any body in accordance with this Schedule, any rights or liabilities—

- (a) enjoyed or incurred by the transferor in connection with the land, and
- (b) subsisting immediately before the implementation date,

shall also be transferred to, and by virtue of these Regulations, vest in, that body.

1A. Any reference in this Schedule, in relation to a school, to land being transferred to, and vesting in, a foundation body is a reference to its being transferred to, and vesting in, that body for the purposes of the schools comprising the group for which that body acts.

2. This Schedule is subject to section 198 of the Education Reform Act 1988(1) (which with Schedule 10 to that Act makes further provision in relation to transfers of property, rights and liabilities), and references in that Schedule as applied by virtue of this paragraph to the transfer date are to the implementation date in relation to the relevant change of category.

PART II

Rules relating to transfers

3.—(1) This paragraph applies where—

- (a) any proposals that a community school should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act or a local education authority have determined under paragraph 4 to the modified Schedule 6 to the Act to implement any such proposals; and
- (b) as from the implementation date the school (as a foundation school) will be a member of a group for which a foundation body acts.

(2) In such a case, any land, other than land held on trust, which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

4.—(1) This paragraph applies where—

- (a) any proposals that a community school should become a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided school) will be a member of a group for which a foundation body acts.

(1) 1988 c. 40. Section 198 and Schedule 10 are amended by section 137 of and Schedule 29 to the Act.

(2) In such a case, any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

5.—(1) This paragraph applies where—

- (a) any proposals that a community school should become a voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary controlled school) will be a member of a group for which a foundation body acts.

(2) In such a case, any land other than playing fields or land held on trust which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

6.—(1) This paragraph applies where any proposals that a foundation school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996⁽²⁾;
- (b) from the Funding Agency for Schools;
- (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
- (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999⁽³⁾;
- (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
- (f) under a transfer under this Schedule; or
- (g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

(4) In this paragraph “transfer agreement” means an agreement—

- (a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body, and

(2) 1996 c. 56.

(3) S.I.1999/2271.

- (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

6A.—(1) This paragraph applies where—

- (a) any proposals that a foundation school which is not a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided or controlled school) will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

6B.—(1) This paragraph applies where—

- (a) any proposals that a foundation school which is a member of a group for which a foundation body acts should become a voluntary aided or voluntary controlled school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a voluntary aided or voluntary controlled school) will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the foundation school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school, to be held by them on trust for the purposes of the school.

7.—(1) This paragraph applies where any proposals that a voluntary aided school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;
- (b) from the Funding Agency for Schools;
- (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
- (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;
- (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
- (f) under a transfer under this Schedule; or

(g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

(4) In this paragraph “transfer agreement” means an agreement—

- (a) made for the purposes of sub-paragraph 2(b) between the local education authority and the foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body, and
- (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

8.—(1) This paragraph applies where—

- (a) any proposals that a voluntary aided school which is not a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body or the local education authority for the purposes of the voluntary aided school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

8A.—(1) This paragraph applies where—

- (a) any proposals that a voluntary aided school which is a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary aided school or was held or used by the local education authority for the purposes of that school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purpose of the school; or
- (b) if the school has no trustees, the governing body.

8B.—(1) This paragraph applies where—

- (a) any proposals that a voluntary aided school or a voluntary controlled school which is not a member of a group for which a foundation body acts should become (as the case may be) a voluntary controlled or a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school will be a member of such a group.

(2) In such a case any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

8C.—(1) This paragraph applies where—

- (a) any proposals that a voluntary aided or a voluntary controlled school which is a member of a group for which a foundation body acts should become (as the case may be) a voluntary

controlled school or a voluntary aided school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the trustees of the school to be held by them on trust for the purposes of the school.

9.—(1) This paragraph applies where any proposals that a voluntary controlled school should become a community school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

(a) any publicly funded land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and

(b) any other land which, immediately before that date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

(a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;

(b) from the Funding Agency for Schools;

(c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);

(d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;

(e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;

(f) under a transfer under this Schedule; or

(g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).

(4) In this paragraph “transfer agreement” means an agreement—

(a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body, and

(b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

10.—(1) This paragraph applies where—

(a) any proposals that a voluntary controlled school which is not a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and

(b) as from the implementation date the school (as a foundation school) will be a member of such a group.

(2) In such a case, any land, other than land held on trust, which, immediately before the implementation date, was held by the governing body or the local education authority for the purposes of the voluntary controlled school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body.

10A.—(1) This paragraph applies where—

- (a) any proposals that a voluntary controlled school which is a member of a group for which a foundation body acts should become a foundation school have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school (as a foundation school) will not be a member of such a group.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body for the purposes of the schools in the group and used for the purposes of the voluntary controlled school or was held by the local authority for the purposes of that school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

11.—(1) This paragraph applies where any proposals that a community special school should become a foundation special school have been approved under paragraph 3 of the modified Schedule 6 to the Act or a local education authority have determined under paragraph 4 of the modified Schedule 6 to the Act to implement any such proposals.

(2) In such a case, any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community special school shall on that date be transferred to, and by virtue of this paragraph vest in,—

- (a) the trustees of the school, to be held by them on trust for the purposes of the school; or
- (b) if the school has no trustees, the governing body.

12.—(1) This paragraph applies where any proposals that a foundation special school should become a community special school have been approved under paragraph 3 of the modified Schedule 6 to the Act.

(2) In such a case—

- (a) any publicly funded land which, immediately before the implementation date, was held by the trustees of the school or the governing body for the purposes of the foundation special school shall on that date be transferred to, and by virtue of this paragraph vest in, the local education authority; and
- (b) any other land which, immediately before that date, was held by the trustees of the school or the governing body for the purposes of the foundation special school shall be transferred to and vest in the local education authority in accordance with a transfer agreement.

(3) In this paragraph “publicly funded land” means land which was acquired—

- (a) from a local authority under a transfer under section 201(1)(a) of the Education Act 1996;
- (b) from the Funding Agency for Schools;
- (c) wholly by means of any maintenance, special purpose or capital grant (within the meaning of Chapter VI of Part III of the Education Act 1996);
- (d) wholly by means of any grant paid under regulation 2 of the Education (Schedule 32 to the School Standards and Framework Act 1998) (England) (No. 2) Regulations 1999;

- (e) wholly by means of expenditure incurred for the purposes of the school and treated by the local education authority as expenditure of a capital nature;
 - (f) under a transfer under this Schedule; or
 - (g) wholly with the proceeds of disposal of any land acquired as mentioned in any of paragraphs (a) to (f).
- (4) In this paragraph “transfer agreement” means an agreement—
- (a) made for the purposes of sub-paragraph (2)(b) between the local education authority and the trustees mentioned in that sub-paragraph or (as the case may be) the governing body, and
 - (b) providing for the land in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

12A.—(1) This paragraph applies where—

- (a) any proposals that a foundation, voluntary aided or voluntary controlled school which is a member of a group for which a foundation body acts should become a school of another category, being (as the case may be) a foundation, voluntary aided or voluntary controlled school, have been approved under paragraph 3 of the modified Schedule 6 to the Act; and
- (b) as from the implementation date the school will be a member of a group for which another foundation body acts.

(2) In such a case any land which, immediately before the implementation date, was held by the foundation body mentioned in sub-paragraph (1)(a) above for the purposes of the schools in the group and used for the purposes of the school shall on that date be transferred to, and by virtue of this paragraph vest in, the foundation body mentioned in sub-paragraph (1)(b) above.

PART III

Outstanding transfers

- 13.** Where immediately before the implementation date in relation to any change of category—
- (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or any trustees of a school, but
 - (b) the land has not yet been so transferred,

Part II of this Schedule shall apply to the school as if it had been so transferred by that time.

PART IV

Transfer of rights to use land

14.—(1) Where paragraph 3, 4, 5 or 11 applies to a school and any land held by a person or body other than a local authority was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by the local authority in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and by virtue of these Regulations vest in, the trustees of the school or, if there are no trustees, the governing body.

(2) Where paragraph 6, 7, 9 or 12 applies to a school and any land held by a person or body other than the governing body of the school was, immediately before the implementation date, used for the purposes of the school, any rights and liabilities—

- (a) enjoyed or incurred by the governing body in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and by virtue of these Regulations vest in, the local education authority.

(3) Where paragraph 6, 7, 9 or 12 applies to a school and any land held by a person or body other than any foundation body which holds any land for the purposes of the school was, immediately before the implementation date, used for the purposes of the school, any rights or liabilities—

- (a) enjoyed or incurred by any such foundation body in connection with the use of the land, and
- (b) subsisting immediately before the implementation date,

shall on that date be transferred to, and vest in, the local education authority in accordance with a transfer agreement.

(4) Nothing in this paragraph applies in relation to land to which any of paragraphs 3 to 12 apply.

(5) In this paragraph—

“transfer agreement” means an agreement—

- (a) made for the purposes of sub-paragraph (3) between the local education authority and the foundation body mentioned in that sub-paragraph, with the prior consent in writing of the governing body, and
- (b) providing for the rights or liabilities in question to be transferred to, and vest in, the authority on the implementation date, whether or not in consideration of the payment by the authority of such amount as may be agreed between the parties.

PART V

Land excluded from transfers and restrictions on disposal of land when proposals are pending

15.—(1) Nothing in Part II of this Schedule has the effect of transferring to, or vesting in, any body—

- (a) any land, rights or liabilities excluded under sub-paragraph (2) or (3),
- (b) any rights or liabilities under a contract of employment,
- (c) any liability of a local authority, governing body, foundation body or trustees in respect of the principal of, or any interest on, any loan, or
- (d) any liability in tort.

(2) If before the implementation date in relation to any change of category—

- (a) the prospective transferee and transferor have agreed in writing that any land should be excluded from the operation of Part II of this Schedule, and
- (b) the Secretary of State has given his written approval of the agreement,

the land (and any rights or liabilities relating to it) shall be so excluded.

(3) If in default of agreement under sub-paragraph (2)—

- (a) the prospective transferee or transferor have applied to the Secretary of State to exclude any land from the operation of Part II of this Schedule, and
 - (b) the Secretary of State has by order directed its exclusion,
- the land (and any rights or liabilities relating to it) shall be so excluded.

(4) An agreement under sub-paragraph (2) may provide for the land to be used or held for the purposes of the school (as a school of a new category) on such terms as may be specified in or determined in accordance with the agreement, and directions under sub-paragraph (3)—

- (a) may confer any rights or impose any liabilities that could have been conferred or imposed by such an agreement, and
 - (b) shall have effect as if contained in such an agreement.
- (5) In this paragraph—

“new category” means one of the categories set out in section 20(1) of the Act;

“the prospective transferee”, in relation to any land, means the body to whom, apart from sub-paragraph (2) or (3), the land would fall to be transferred under Part II of this Schedule; and “the prospective transferor” shall be construed accordingly.

16.—(1) For the purposes of Part V of this Schedule the procedure for becoming a school of another category is pending in relation to a school when it has been initiated by the governing body in relation to the school on any occasion and not terminated (as initiated on that occasion).

(2) For those purposes, that procedure is to be regarded as initiated in relation to a school on any occasion on receipt by the local education authority of notice of a meeting of the governing body at which a motion for a resolution to consult about proposals to change category is to be considered.

(3) For those purposes, that procedure, as initiated on any occasion, is to be regarded as terminated

- (a) if the meeting is not held;
- (b) if the meeting is held but the motion is not moved or, though the motion is moved, the resolution is not passed;
- (c) if consultation is not initiated in accordance with section 28(5) of the Act as modified by these Regulations;
- (d) if the proposals in respect of which consultation was initiated are not published;
- (e) if the said proposals are rejected by the relevant school organisation committee or the adjudicator or withdrawn; or
- (f) on the date of implementation of such proposals.

17.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority shall not—

- (a) dispose of any land used wholly or partly for the purposes of the school, or
- (b) enter into a contract to dispose of any such land,

except with the consent of the Secretary of State.

(2) Sub-paragraph (1) does not apply in relation to a disposal which is made in pursuance of a contract entered into, or an option granted, before the procedure for becoming a school of another category was initiated in relation to the school.

(3) Where proposals for becoming a school of another category are approved, the procedure for becoming a school of another category is not to be treated as terminated for the purposes of this paragraph in relation to any land, where agreement is required to be reached under paragraph 2(1)

of Schedule 10 to the Education Reform Act 1988 (identification of property, etc.) on any matter relating to that land, until the date on which that matter is finally determined.

(4) A disposal or contract shall not be invalid or void by reason only that it has been made or entered into in contravention of this paragraph and a person acquiring land, or entering into a contract to acquire land, from a local authority shall not be concerned to enquire whether any consent required by this paragraph has been given.

(5) This paragraph has effect notwithstanding anything in section 123 of the Local Government Act 1972⁽⁴⁾ (general power to dispose of land) or in any other enactment; and the consent required by this paragraph shall be in addition to any consent required by subsection (2) of that section or by any other enactment.

(6) In this paragraph—

- (a) references to disposing of land include granting or disposing of any interest in land, and
- (b) references to entering into a contract to dispose of land include granting an option to acquire land or such an interest.

18.—(1) During any period when the procedure for becoming a school of another category is pending in relation to a school, a local authority shall not, in relation to any land of the authority used or held for the purposes of the school, take without the consent of the Secretary of State any action by which the land ceases to any extent to be so used or held.

(2) If in the case of any school—

- (a) proposals that a school become a school of another category are approved, and
- (b) a local authority have, in relation to any land, taken any action in contravention of subparagraph (1),

the provisions relating to the transfer of property shall have effect as if, immediately before the implementation date in relation to the change of category, the property were used or held by the authority for the purposes for which it was used or held when the procedure for becoming a school of another category was initiated.

(3) In this paragraph—

- (a) “the provisions relating to the transfer of property” means this Schedule and section 198 of, and Schedule 10 to, the Education Reform Act 1988, and
- (b) the references to taking action include appropriating property for any purpose.

(4) 1972 c. 70.